IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.697 OF 2006 IN SUIT NO.1228 OF 1985

Rasilaben K. Kansara. ..Plaintiff.
Vs.
Sumitra Amritlal Kocha and ors. ..Defendants.

Mr. Pratik Seksaria with Ms. Sampat i/by Raval Shah & Co. for the Applicant.

Mr. V.R.Dhond with Mr. N. Engineer, Ms. Khatri i/by B. Munim & Co. for the Plaintiff.

CORAM : R.S. MOHITE, J.
DATED : 12/9/2006.

P.C.

1. This chamber summons is taken out by the original defendant Nos. 2 and 3 for various reliefs. The Advocate for the defendant Nos. 2 and 3 makes a statement that he only seeks relief in terms of prayer clause (a) and (b) and will not press prayers (c), (d) and (e) till the suit execution proceedings are complete. Prayer (a) in the chamber summons is that the residential flat situated on the 6th floor of the building called as "Bharat Apartments" situated at Gandhigram Road, Juhu, Mumbai be released to defendant No.3 and the Court Receiver appointed as Receiver in respect of the said flat be discharged without passing accounts. This prayer is pressed on the ground that the said flat has been declared in the award as not being

the partnership property and it is the personal property of defendant No.3. The award has been made under a rule of this court. Nobody has challenged the said award. It was sought to be argued on behalf of the original plaintiff that they may have to proceed against the said flat in case their claim is not satisfied. In this regard, it is seen that the Plaintiff has 24.25% share in the Goregaon factory which is valued by a valuer appointed by the Court Receiver at Rs.69.28 lacks. Obviously 100% share would be over four times the said amount and this property by itself will secure the claim of the plaintiff. There is some dispute between the parties about the date on which the valuation is to be made. According to defendant Nos. 2 and 3 the valuation should be made as on the date when the notice of dissolution was given, They have taken out a separate proceeding challenging the date of valuation but their challenge has been negatived by both by a Single Judge and the Division Bench of this court and they have given time to carry the matter further. This will not change the situation. The share of the plaintiff will always be secured by the Goregaon factory which has been held to be a partnership asset. In the circumstances, chamber summons will have to be granted in terms of prayer clause (a). As far as prayer clause (b) is concerned, the same seeks directions to the Court Receiver to pay to defendant Nos. 2 and 3 the interest

accrued on their share from the sale proceeds of another partnership asset i.e. flat situated in Seagull Apartment. This prayer clause will have to be granted. The chamber summons is therefore, made absolute in terms of prayer clause (a) and (b). It is made clear that the Court Receiver will be entitled to deduct his charges and expenses. Chamber summons stands disposed off accordingly.

(R. S. MOHITE, J.)